

From: Mimi Donlin

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## **Memorandum**

**Date:** January 2, 2002  
**To:** BID Contract Reviewers  
**From:** J. Michael Carey  
**Subject:** Draft BID Contracts

From the desk of .....  
J. Michael Carey  
City Clerk  
Room 360, City Hall  
200 N. Spring Street  
Los Angeles, CA 90012-4190

213-978-1020  
FAX: 213-978-1027  
jcarey@clerk.lacity.org

I have enclosed 2 Draft BID Contracts. Please review the drafts and get comments back to me by Wednesday, January 9, 2002. We have other contracts that need to be finalized for BID's that are in similar situations, including the Hollywood BID. We need to quickly agree on some standard provisions and move forward with executed contracts to allow us to disburse the funds we have received from the County. The City Attorney is also reviewing the draft language and will need to agree on any final contract language.

The Draft Contract for the Toy District reflects a contract under the City's BID Ordinance. As you will note, the Draft Contract still provides an Advisory Board as required by the City's BID Ordinance. We will need to go back to City Council for an amendment to that Ordinance to remove the Advisory Board provisions. I am willing to do that, but that will take some time. You should also be aware that any Property Owner BID approved prior to January 1, 2002 will have the Advisory Board provisions because the City Ordinance enacting the assessment, etc. referenced the Management District Plan, which included (at that time) the Advisory Board. We may be able to have an amending ordinance to delete the Advisory Board in those previously adopted ordinances, but this will also take time.

The Draft Contract for the newly amended 1994 BID Law does not have the Advisory Board. I have drafted the contract to reflect the provisions of the new law.

Both contracts, with the exception of the Advisory Board provisions and the applicable law under which the District was formed, are generally the same. Some specific changes are noted below.

Reporting requirements have been modified. We will still want quarterly reports and the laws require an Annual Report. The requirement for the quarterly reports is simply to create some mechanism to review the activities during the year. If some other frequency or form is better, please provide the language. See Section 2.2.

The language now requires CPA to submit financial statements as we have had in the past. See Section 2.3.

I have attempted to draft some flexibility into the contracts to avoid having to go through what appears to be an election, if any changes occur relative to the Management District Plan. As we discussed, the flexibility should be included in the Management District Plan that is adopted. Even if the

Management district Plan has some flexibility, the question remains how far we can deviate from the budget items? I have set 10% of the total Budget. Any thoughts on whether we need this or is there some other language that will do? Please note that we are still entrusted with ensuring that the stakeholders got the benefits that they thought they were voting on. See Section 2.7.

I have modified the City Clerk duties to add a monitoring role. I have struck the audit and review language. The City has an obligation to ensure that benefits are received and the new language should be sufficient to allow us to work with BIDs if there are any complaints. See Sections 3.1 and 3.2.

I have changed the disbursement provisions. We will notify you of receipt of the assessment funds from the County within 10 business days. You submit an invoice and we pay within 10 business days of the invoice. Same for old year assessments. The intent is to disburse the funds that we get. However, I have added a provision that allows the City to withhold some or all funds depending on a review of performance. This is to ensure that if we have problems, I am not obligated to continue to disburse funds pursuant to Section 5.1 and 5.2. If I can find that the contract has been breached for failure to implement programs and accomplish the same thing, I will be happy to remove this provision. See Section 5.

I have changed the City's cost recovery. We will give you an estimate of the costs for the initial year for your budgeting purposes. We will commit to not billing more than 110% of the estimated cost. For subsequent years, we should be able to give you an actual cost, but will again commit to the 110% provision. I have changed the cost provisions to allow us to recover our costs for specialized services, either requested by the Corporation or initiated by the City. If we initiate the review, we have to give the Corporation 15 business days notice to allow the Corporation time to resolve the need for the review. If we initiate something on our own and do not give the Corporation notice, the City will bear the cost of the review. The City cannot ignore complaints from the stakeholders and we have to have a way to recover our extraordinary costs. See Section 6.

I have changed the Conflict of Interest provisions to make the provisions more business friendly. See Section 12.

I have added provisions related to the Brown Act and the Public Records Act. Although this is only addressed in the amended 1994 Law, I assume that we will get stuck with these for the 1989 Law, the old 1994 Law, and the City's Ordinance. See Section 20.

I have not addressed the rollover of funds in the draft contract for the amended 1994 Law. These provisions are applicable to a District that is renewing after it has expired. Bad language. Carryover of funds from year to year is already covered in the Annual Report requirements of the Law. We may need some language in the Hollywood BID to reflect the carryover that was voted on by the stakeholders.

Enclosures: Draft Toy District BID Contract  
Draft Contract for Amended 1994 BID Law

This Agreement ("Agreement") is entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and the CENTRAL CITY EAST ASSOCIATION, a California nonprofit corporation ("Corporation"), for the administration of the Toy District Business Improvement District, with reference to the following facts:

RECITALS

- A. On September 5, 2001 the Los Angeles City Council established a Landscaping, Security, Programming and Maintenance Property and Business Improvement District (LSPM-BID) to be known as the Toy District Business Improvement District, ("District"), pursuant to Sections 6.600 through 6.620 of Chapter 9 of Division 6 of the Los Angeles Administrative Code, adopted as City Ordinance 173,167 ("Code") and California Constitution Article XIID, and by and through the adoption of City Ordinance No. 174,239 (Council File 00-1904) ("Ordinance"). Said Ordinance authorized the annual levy of a special assessment on real property for the improvements, maintenance and activities of specifically defined commercial districts of the City within special economic incentive zones.
- B. Pursuant to the aforementioned Ordinance and enabling laws, a system of charges ("Assessments"]") has been levied upon the various parcels of real property located within the District.
- C. Such Assessment levied and collected by the City shall be used only for the purposes set forth in said Ordinance, which incorporates by reference the Management District Plan, except for any City costs or expenses which are charged to the District by the City for administration of the District program.
- D. The services and activities to be performed by the Corporation are of a supplemental nature, such that, were it not for the establishment of the District, the supplemental services could not or would not be performed by the City or by City employees, and that the interests of the City are better served by an agreement with the Corporation than by the performance or attempted performance of such supplemental services and activities by the City.
- E. The City currently intends that the level of services presently being provided by the City in the area within the District ("baseline service level") will not be affected by the establishment of the District or the levying of assessments.
- F. The City Council has authorized the Los Angeles City Clerk ("City Clerk"), as Business Improvement District Program Coordinator, and subject to approval by the Los Angeles City Attorney, to execute and administer this Agreement for administration of the District program.
- G. Subsequent to adoption of said Ordinance by the Los Angeles City Council, and prior to the execution of the Agreement, Corporation has commenced tasks associated with this Agreement including, but not limited to, the purchase of insurance as required in Section 8.1. herein.

NOW, THEREFORE, the City and the Corporation in consideration of the recitals, mutual promises, covenants, agreements and representations set forth below, hereby promise, covenant, agree and represent as follows:

Section 1. TERM OF AGREEMENT

- 1.1 The term of this Agreement shall be from January, 2002 to and including December, 2004. The Corporation may request an extension of the termination date in order to allow the Corporation to expend any remaining funds for authorized programs in the event that all District funds are not received or spent by December 31<sup>st</sup> of 2004. Said extension shall be at the sole discretion of the City.

Section 2. CORPORATION RESPONSIBILITIES

- 2.1. PROGRAM IMPLEMENTATION AND OPERATION. The Corporation shall be fully responsible for developing, implementing, directing and operating the District programs, improvements, or activities as described in the Management District Plan, pursuant to Section 6.603 of the Code. The District Advisory Board shall not provide for, or be responsible for, the provision, management or administration of any District programs, improvements or activities. The Corporation understands and expressly agrees that it will comply with all applicable laws and regulations.
- 2.2. PROGRAM AND BUDGET REPORTS. The Corporation shall cooperate with the District Advisory Board relative to the preparation and submission to the City Council of an Annual Report for each fiscal year for which Assessments are to be levied and collected by the City. The Corporation shall arrange for submission to the City Clerk the various District program plans and reports, including the following:
- A. Annual Report. The Corporation shall cooperate with the Advisory Board of the District relative to the preparation and submission to the City Clerk of an Annual Report for each fiscal year for which Assessments are to be levied and collected. The Report shall be prepared in accordance with Section 6.617 of the Code and shall contain all items required by said Section. The Report shall be submitted on or before \_\_\_\_\_?\_\_\_\_\_, 2002 for the second operating year, and on or before August 1<sup>st</sup> of each successive year of operations.
- B. Quarterly Reporting Requirement. The Corporation shall submit quarterly activity reports. The report for January, February and March of each District operating year shall be submitted no later than April 30 of the subject year; the report for April, May and June no later than July 31 of the subject year; the report for July, August and September no later than October 31 of the subject year; and the report for October, November and December no later than January 31 of the subsequent year. The activity reports shall describe, in narrative summary form and include summary statistical and budget data, the status and progress of the various District programs, improvements and activities as described and referenced in the Management District Plan and subsequent Annual Reports.

- 2.3. **FINANCIAL STATEMENTS.** For each year of District operations (“fiscal year”) the Corporation shall, within 60 days of the close of the subject fiscal year, submit to the City Clerk one complete set of financial statements, including disclosures, covering the subject fiscal or operating year, compiled or prepared by a Certified Public Accountant.
- 2.4. **PROGRAM COORDINATION.** The Corporation shall render professional services and shall utilize and cooperate with the City Clerk, or such personnel as the City Clerk designates, to provide work program coordination consisting of budget and program development and implementation, program administration, assessment verification, and various related plans, projects and reports.
- 2.5. **SUPPORT SERVICES.** The Corporation assumes responsibility for the contracting for support services as required, and paying for all such direct and indirect expenses as may be necessary for the timely completion of work. Any obligations or expenditures for items not budgeted shall not be paid through assessments collected for the District. In administering subcontracts as necessary for providing District programs, improvements or activities, the Corporation shall comply with all applicable State, County and City laws and regulations.
- 2.6. **LIAISON WITH COMMUNITY.** The Corporation shall maintain an ongoing liaison relationship with the community, which shall include:
- A. **Public Meeting.** The Corporation shall organize and conduct, at a minimum, one annual public meeting to be noticed in writing by the Corporation to all assessed property owners in the District. This meeting will be conducted at a location within the District, in order to allow the property owners to familiarize themselves with the officers and functions of the Corporation and other members within the District, and to inform the Corporation's representative of their concerns and desires.
  - B. **Newsletters.** The Corporation shall prepare a District newsletter to be produced on a quarterly basis, at a minimum, and made available to all assessed property owners in the District. The Corporation may, at the Corporation's option, provide the newsletter via standard mail or by electronic transmission, or by maintaining a supply of newsletters at the Corporation's office. The newsletter will be designed to facilitate and maximize the exchange of information between the Corporation, the City and the members of the District. Each issue of the newsletter shall be submitted in duplicate to the City Clerk for reference.
  - C. **Other events and activities** which involve the members of the District and which encourage attainment of the goals and objectives described in the Management District Plan.
- 2.7. **BUDGET.** Each program, improvement or activity specified in the Management District Plan or the Annual Report shall be implemented by the Corporation. The Corporation and the City agree that amounts shown in the Management District Plan or the Annual Reports were the best estimates of the cost of those programs, improvements or activities at the time those estimates were made. Deviations from those estimates are to be anticipated. The City and the Corporation also agree that the programs, improvements and activities may not be completed within the year budgeted, given normal delays that can be expected in these types of programs. The Corporation will use its best efforts to implement and complete all the programs, improvements and activities within the amounts specified, but may deviate among the programs, improvements and activities relative to

the amounts expended. A ten percent (10%) deviation in a budget line item will not be considered a deviation that impacts the special benefits to be received. If the Corporation decides to make budget allocation changes that exceed ten percent (10%) of the total budget for all programs, improvements and activities, and such changes would impact the benefits received by the assessed property owners in the District, the Corporation will request that the Advisory Board submit a request to the City Council to modify the programs, improvements and activities to be funded pursuant to Section 6.618.3 of the Los Angeles Administrative Code.

- 2.8. **ASSESSMENT RECORDS.** The Corporation shall maintain a complete database or other comprehensive listing, current to the most recent property tax year available, containing the following information: the assessor parcel number and situs address of all parcels in the District; the name and address of the legal owner of each parcel; the amount of Assessment levied upon each parcel; the proportionate financial obligation of the Assessment levied upon each parcel, in relation to the entire District Assessment; and, the Assessment calculations for each parcel, including all variables used in the calculation of the Assessment. Said database shall be updated at least once each year during District operations to reflect changed conditions and to accurately reflect the status of the assessed parcels. The City Clerk may, at the City Clerk's discretion, provide assistance in compiling or correcting assessment data or information relative to properties in the District; however, the City Clerk shall in no way be obligated to prepare, produce or correct such data or information. Corporation agrees to make such District data available at the Corporation's office for inspection by property owners in the District during regular business hours.
- 2.9. **ANNUAL ASSESSMENT PREPARATION.** By June 1<sup>st</sup> of each District operating year beginning with June 1, 2002, the Corporation shall supply the City Clerk with Assessment data for placement on the Los Angeles County Assessor tax roll for the subsequent tax year, in a format to be prescribed by the City Clerk. The Assessment data shall include the following: assessor parcel numbers of all parcels in the District; the amount of Assessment to be levied upon each parcel; exemption documentation acceptable to the City Clerk, the Assessment calculations for each parcel, including all variables used in the determination of the Assessment, and other information which the City Clerk may require. Any corrections or adjustments to the annual assessment transmittal, as well as the accuracy of any such corrections or adjustments, shall be the responsibility of the Corporation. Upon request of the City Clerk, Corporation hereby agrees to promptly complete a written request for an investigation of discrepancies and make all reasonable efforts to obtain additional related documentation , as described in Section 3.4. herein.

### SECTION 3. CITY RESPONSIBILITIES.

- 3.1. **ADMINISTRATION.** This Agreement shall be administered on behalf of the City by the City Clerk.  
The City Clerk shall:
- A. Effect the timely collection of the annual assessment.
  - B. Coordinate the collection of the annual assessment through an interagency agreement with the County of Los Angeles, and through other means, including direct billing, as the City

Clerk deems appropriate.

- C. Pursue delinquent assessments and remit such assessments to the corporation.
- D. Provide general assistance, clarification or information to the Corporation, the assessed parties, business organizations and the public.
- E. Maintain a continual liaison with the Corporation, including assisting with the coordination of services from various other City departments, bureaus and agencies.
- F. Authorize supplemental Assessments, adjusted Assessments, Assessment exemptions, reductions or refunds, to be issued by either the City or the County of Los Angeles.
- G. Authorize and direct the disbursement of Assessment funds to be made by the City Controller to the Corporation.
- H. Perform other related administrative, analytical, clerical, financial, technical or public relations tasks, as mutually agreed to by the City Clerk and the Corporation.
- I. Monitor the implementation and completion of the programs, improvements, and activities specified in the Management District Plan or Annual Report to ensure property owners are receiving the special benefits.

3.2. DISCREPANCIES. The City Clerk may assist with the resolution of any discrepancies in individual Assessment amounts, calculations, or benefits. The City Clerk reserves the right to:

- A. Conduct reviews of existing primary data; verify Assessment data as compiled by any consultant or subcontractor hired by the Corporation; perform field or site inspections to verify the accuracy of existing or secondary data, or to substantiate a claim made by a property owner subject to assessment in the District.
- B. Recalculate the Assessment amount due and direct the Los Angeles County Auditor-Controller to respond appropriately, or make such other arrangements with the Corporation and the property owner to resolve the incorrect assessment.

Such actions by the City Clerk may require a written request from the Corporation to conduct the investigation; additional related documentation, such as a written request from the affected property owner, may also be required. All City Clerk costs associated with such supplemental investigations may be recovered from the District Assessments collected, subject to existing or future City policies and procedures regarding recoverable costs and expenses. Such costs will be in addition to those costs set forth in Sections 6.1 and 6.2 of this Agreement.

3.3. CONFIDENTIAL INFORMATION. Certain types of information obtained and possessed by the City, including certain tax and business data, have been determined to be confidential information by the City Attorney and will not be made available to the Corporation.

#### SECTION 4. AVAILABILITY OF DOCUMENTS.

- 4.1. The designs, plans, reports, files, invoices, investigations, materials and documents prepared or acquired by or for the Corporation pursuant to this Agreement (including any duplicate copies) shall be made fully available to the City. Corporation agrees to exercise reasonable and due diligence in providing for the secure storage of all such materials and to provide copies for official City records upon request from the City Clerk.

#### SECTION 5. DISBURSEMENTS.

- 5.1. Based upon the annual levies as listed in the Management District Plan or Annual Reports and with the exception of recoverable City costs, and net of any County charges or supplemental City service fees, loans or advances, the City shall disburse to the Corporation the actual revenues received from the assessments. Assessment revenues shall be disbursed to the Corporation by the City periodically throughout each year.

The City Clerk will notify the Corporation of the amount of funds available within ten (10) business days of the date of receipt of a transmittal of funds to the City from the County of Los Angeles, or the receipt of funds through the direct billing by the City of public agencies or other entities with assessable properties in the District. The Corporation will deliver an invoice to the City Clerk requesting such funds. The City Clerk agrees to pay the Corporation the amount due the Corporation within ten (10) business days of receiving said invoice, except in the case of circumstances beyond the control of the City Clerk. The City shall not be responsible for delays in disbursements to the Corporation due to delays in funds transmittals by the County or payment delays by other public entities, organizations or agencies.

- 5.2. The City Clerk will notify the Corporation of the amount of delinquent assessments that have been collected and are available to the Corporation for the improvements and activities. The Corporation will invoice the City for the amount of delinquent assessments. The City Clerk agrees to pay the Corporation the amount due the Corporation within 10 business days of receiving the invoice for the delinquent assessments that have been recovered. The City Clerk will notify the Corporation of these assessments when the amounts collected exceed \$ ? .
- 5.3. The City Clerk, after giving notice to both the Corporation and the Advisory Board, may withhold either all or some portion of the actual revenues received from assessments, if the City Clerk finds that the Corporation is not properly administering the Management District Plan. The notice given by the City Clerk will set forth the specific problems and issues relative to the Corporation's failure to properly implement the Management District Plan. The City Clerk and the Corporation will immediately attempt to resolve the problems.
- 5.4. If the Corporation is dissolved, or dissolves itself, prior to or upon the expiration of this Agreement, any unexpended monies will be transmitted to the City for distribution as described in Section 11 of this Agreement.

#### SECTION 6. COSTS AND EXPENSES.



- 6.1. **RECOVERABLE COSTS.** The City shall deduct from the Corporation's City account or District special fund, the Corporation and the District's share of recoverable City costs. The City costs associated with the District's billing, account maintenance, program and report reviews as well as liaison activities, assistance to the Corporation and general administration will be reimbursed to the City. Such costs may be withheld by the City Clerk prior to making any distribution of funds to the Corporation.
- A. **First Operating Year.** Recoverable costs are reimbursable from the District's assessment revenues for the first year of operations. The reimbursable direct costs and expenses include salaries, general expenses and the District's share of required Program equipment costs. The First Operating Year of recoverable City costs is estimated to be \$\_\_\_\_\_. In no event will the City costs exceed 110% of the estimated cost.
  - B. **Subsequent Operating Years.** The City Clerk shall provide the Corporation with a report detailing the recoverable or reimbursable costs for the second year, and for each subsequent year of District operations, prior to the commencement of each year of District operations, during the term of this Agreement, when requested by the Corporation in writing. Salary expenses and equipment expenses may be adjusted annually to reflect authorized changes in salaries of the Civil Service classifications of City Clerk employees involved in District administration and the City's cost of obtaining required equipment. The pertinent subsection of the City Clerk's authorized Department Budget may be applied. In no event will the City costs exceed 110% of the estimated cost given to the Corporation for subsequent operating years.
  - C. The amounts and categories of allowable recoverable or reimbursable City costs are subject to existing or future City policies and procedures regarding recoverable costs and expenses, and remain subject to review and action by the City Council. In no event will a change in policies or procedures be imposed on the Corporation during a current fiscal year, such that the charge would require additional funds to be paid to the City.
- 6.2. **STANDARD CITY FEES.** All standard City fees, including but not limited to, fees or service charges for reproduction or transmittal requests or for the generation of real property or business ownership lists, reports or specific documents, may be applied to requests by the Corporation. Such fees are in addition to the costs in Section 6.1.
- 6.3. **SUPPLEMENTAL CITY FEES.** Supplemental fees may be charged to the Corporation by the City to cover the additional costs incurred for specialized services, including: researching and compiling data; preparing specialized types of reports specific to the needs of the Corporation; and, performing reviews as described in Section 3.2 of this Agreement. The Corporation may request the performance of all such specialized services in writing. If the City determines to proceed with said request, the City shall notify the Corporation of any applicable fees prior to performing the specialized service requested. The City may initiate such special services to resolve discrepancies or assessment benefit problems. The City will notify the Corporation fifteen (15) business days prior to initiating such services in order to allow the Corporation to resolve the need for such specialized services. If notice is not given, but the City does conduct specialized services, the cost of those specialized services will be borne by the City. Such fees shall be deducted from the Assessments collected, or shall be paid in advance by the Corporation, at the City Clerk's

discretion. Such fees are in addition to the costs in Section 6.1.

- 6.4. LOS ANGELES COUNTY FEES. All fees and costs charged to the City by the County of Los Angeles for processing or adjusting Assessments or Assessment data, including, but not limited to District report preparation fees, supplemental billing fees and technical, research or systems expenses, shall be deducted from Assessments collected. Such fees are in addition to the costs in Section 6.1.

#### SECTION 7. COST AND EXPENSE RECORDS.

- 7.1. In accordance with generally accepted accounting principles, the Corporation shall maintain full and complete records of activities and services performed under this Agreement. Such records shall be open to the inspection of the City and the City may audit such records. The Corporation agrees to keep all such records on file in a secure location, which may include an area designated by the City Clerk, for a minimum of three (3) years subsequent to the expiration of this Agreement.
- 7.2. The records maintained by the Corporation shall include all invoices and receipts for expenditures incurred and must include supporting documentation for the activities or programs described in the District budget or Management Plan. The City reserves the right to perform a contract compliance audit at least once annually. The Corporation agrees to keep all receipts and other supporting documents available for inspection and as specified in section 7.1. of this Agreement.

#### SECTION 8. INSURANCE.

- 8.1. The insurance requirements are provided in Appendix A, "Standard Provisions for City Personal Services Contracts", attached hereto and made a part hereof. All references to "contractor" or "consultant" shall refer to the Corporation. Standard City insurance requirements shall apply, including general liability, indemnification and naming the City as an additional insured in the Corporation's policy and evidence of coverage and Director's Liability coverage.

#### SECTION 9. AMENDMENTS.

- 9.1. The City periodically may request changes of an administrative nature relative to the scope of services of the contract to be performed by the Corporation hereunder. Such changes, which are mutually agreed upon by and between the City and the Corporation and which do not materially alter the programs, activities or improvements described in the Management District Plan, shall be incorporated in written amendments to this Agreement. This Agreement may not be amended except in writing by the mutual agreement of both parties.
- 9.2. A failure to object to a breach of this Agreement shall not constitute an amendment thereof, nor shall it waive any future breach of the Agreement.

#### SECTION 10. NOTICES.

- 10.1. Notice to the parties shall, unless otherwise requested in writing, be sent in duplicate to:

City: Karen E. Kalfayan, Chief

Administrative Services Division  
Office of the City Clerk  
200 North Spring Street, Room 224  
Los Angeles, California 90012

Attn: Special Assessments Section  
(213) 978-1099 / Fax (213) 978-1130

Corporation: Larry Rauch, Chair  
CENTRAL CITY EAST ASSOCIATION  
744 S. San Pedro Street  
Los Angeles, CA 90014

(213) / 228-8484 Fax (213) 228-8488

- 10.2. Any notice, report, newsletter or other communication required or prepared pursuant to this Agreement shall be deemed to be properly transmitted when delivered via messenger or deposited in the United States mail for delivery to the parties listed above. Changes to the address of any of the parties may be accomplished for purposes of this Agreement by providing written notice of such change via the United States mail.

#### SECTION 11. ASSETS OF THE DISTRICT.

- 11.1. In the event that either the District is disestablished or otherwise discontinued, then the existing assets of the District, including any funds in possession of the Corporation, shall become the property of the City. However, said assets shall only be used: (1) to pay the City any outstanding sums due to it by the District or the Corporation and, (2) to disburse the remaining assets, after payment to the City, to the owners of assessed properties in an amount proportionate to the amount of assessment paid by the property owner, on a prorated basis, subject to applicable state legislation and City Council approval. The City reserves the right and option to place tangible assets into City service, to sell the assets, or to consider the assets as fully depreciated salvage items, subject to City policy.

#### SECTION 12. CONFLICT OF INTEREST.

- 12.1 For the duration of this Agreement, the Corporation or its employees or agents will not perform services that will result in a conflict of interest to the Corporation or its duties under this agreement. Members of the Board of Directors of the Corporation and its Executive Director must disclose any interest that they may have in any matter coming to the Board of Directors for a decision. The Board Member(s) or the Executive Director should not participate in the decision making process when they have any interest that could be effected by the Board's decision. The Executive Director must disclose and not participate in the decision making process when the decision could directly effect the interest of the Executive Director.

- 12.2. Nothing in this section prohibits or precludes the Corporation's officers, members, directors, agents or employees from providing or presenting to other interested parties or entities, information or assistance related to the District's establishment or operations, or to the establishment or operations of other proposed or existing districts throughout the City.
- 12.3 The Corporation, in carrying out the improvements and activities as set forth in the Management District Plan or the Annual Reports, should encourage local businesses within the boundaries of the Business Improvement District and within the city of Los Angeles to submit proposals for those services needed by the Corporation to implement the improvements and activities. Board Members of the Corporation and the Advisory Board should also not be precluded from submitting proposals for these services.

#### SECTION 13. NONDISCRIMINATION.

- 13.1. In the performance of this Agreement, the Corporation shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status or medical condition.

#### SECTION 14. INDEMNITY.

- 14.1. Except for the active negligence or willful misconduct of the City, the Corporation undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees and costs of litigation, damage or liability of any nature whatsoever, for death or injury to any person, including the Corporation's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by the Corporation or its employees, agents or subcontractors.

#### SECTION 15. ASSIGNMENT.

- 15.1. The Corporation covenants and agrees that it will not assign or transfer its rights under this Agreement, either in whole or in part, without first obtaining the written consent of the City, which consent may be granted or denied at the sole and absolute discretion of the City.
- 15.2. Any attempt by the Corporation to assign or transfer its rights or obligations without such prior written consent shall be null and void and may, at the option of the City, automatically terminate this Agreement.

#### SECTION 16. GENERAL FUND NOT LIABLE.

- 16.1. Neither the General Fund of the City, nor any other fund, revenue source or monies whatsoever of

the City, except for the actual collected District Assessment net revenue, shall be liable for payment of any obligations arising from this Agreement. Said obligations are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon its income, receipts or revenues.

- 16.2. This Agreement embodies all of the Corporation's reimbursement rights and no further note or other document shall be required to be executed by the City.

#### SECTION 17. CORPORATION NOT AGENT OF CITY.

- 17.1. Neither the Corporation or any of the Corporation's employees, agents, representatives or subcontractors are or shall be considered to be agents of the City, nor shall the Corporation be considered a legislative body, relative to the performance of the Corporation's obligations under this Agreement or for any other purpose.

#### SECTION 18. SEVERABILITY.

- 18.1. If any portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

#### SECTION 19. WAIVER.

- 19.1. The waiver by any party to this Agreement of breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

#### Section 20. BROWN ACT AND PUBLIC RECORDS ACT.

- 20.1. The Board of Directors of the Corporation is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose.

20.2. Notwithstanding Section 20.1 above, the Board of Directors of the Corporation, when hearing, discussing, deliberating and taking actions on matters within the subject matter of the Business Improvement District or that are covered under this agreement, will comply with the provisions of the Ralph M. Brown Act (Chapter 9, commencing with Section 54950 of Part 1 of Division 2 of Title 5 of the Government Code).

20.3. Notwithstanding Section 20.1 above, the Corporation and the Board of Directors are also subject to and must comply with the California Public Records Act (Chapter 3.5, commencing with Section 6250 of Division 7 of Title 1 of the Government Code).

SECTION 21. STANDARD PROVISIONS FOR CITY PERSONAL SERVICES CONTRACTS.

- 21.1. Corporation agrees to comply with all applicable provisions as described in the City's "Standard Provisions for City Personal Services Contracts" document ("P.C."), which is attached as Appendix A and is incorporated herein by reference. Compliance shall include the timely completion and return of any required City forms.
- 21.2. Corporation is not subject to the Living Wage Ordinance or the Equal Benefits Ordinance. Specific exemption letters will be processed for these two (2) Ordinances.

SECTION 22. SIGNATURE AUTHORITY.

- 22.1. The City Clerk of the City of Los Angeles and the President or the Chair of the Board of Directors of the Corporation declare that they are authorized to execute this Agreement on behalf of the City and the Corporation.

IN WITNESS WHERE OF, this Agreement is duly executed by THE CITY OF LOS ANGELES and the CENTRAL CITY EAST ASSOCIATION for the TOY DISTRICT BUSINESS IMPROVEMENT DISTRICT on behalf of the parties to this Agreement.

CITY

Approved as to Form and Legality  
ROCKARD J. DELGADILLO, City Attorney

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
J. MICHAEL CAREY  
City Clerk

\_\_\_\_\_  
Date

CORPORATION

\_\_\_\_\_  
LARRY RAUCH  
Chair, Board of Directors or President  
(Specify and circle appropriate title)  
Central City East Association

\_\_\_\_\_  
Date

CITY CLERK ATTESTATION

\_\_\_\_\_  
Deputy City Clerk

\_\_\_\_\_  
Agreement No.

\_\_\_\_\_  
00-1904  
Council File No.

\_\_\_\_\_  
ASD

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